HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY

Writ Appeal No.475 of 2007

Between:

S. Seshachalam and another

… Appellants

And

Government of A.P., rep., by its Secretary to Govt. Food & Civil Supplies Dept., Secretariat, Hyderabad and three others

… Respondents

::JUDGMENT::

Counsel for the appellants : Shri K. Ananda Rao

July 11, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 21-11-2006 passed by the learned Single Judge in Writ Petition No.25803 of 1995, whereby he rejected the appellants prayer for issue of a mandamus to the respondents to regularise their services on the post of Junior Assistant in Andhra Pradesh State Civil Supplies Corporation Limited (for short, 'the Corporation').

The appellants got backdoor entry in the services of Andhra Pradesh State Essential Commodities Corporation (for short, 'the Corporation') inasmuch as they were engaged as Junior Assistants in February 1986 and September 1985 respectively without following any procedure consistent with the doctrine of equality enshrined in

Articles 14 and 16 of the Constitution. They along with other employees of the Corporation filed Writ Petition No.15847 of 1990 for regularisation of service in accordance with the policy contained in G.O.Ms.No.448, dated 16.6.1989. The same was disposed of by the learned Single Judge in the following terms:

> "This writ petition is filed by certain employees, who are working as Junior Assistants on daily wage basis in the second respondent-corporation since 20th August, 1985, seeking for a direction to the respondents to absorb them on regular basis in accordance with the conditions laid down under G.O.Ms.No.448, dated 16.6.1989.
>
> Mr.Vasudeva Reddy, learned counsel for the petitioners submit that the juniors to the petitioners were absorbed as per G.O.Ms.No.448, as the G.O. contains annexures A & B to Column No.3 wherein their juniors are shown as regularised. Therefore, the learned counsel contends that the action of the respondent in not regularising the services of the petitioners similarly is bad and illegal.
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> Shri M. Subba Reddy, Senior Advocate, appearing for the Corporation relying on G.O.Ms.No.212, dated 22.2.1994 submits that the petitioners have to fulfil the criteria mentioned under that G.O. before they seek regularisation.
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> In view of the G.O. 212 dated 22.4.1994, I direct the respondents to follow the guidelines issued therein and consider the claim of the petitioners in the light of the said guidelines for regularisation of their services. Till the claim of the petitioners is considered, they will be continued in service. It is also made clear that no freshers will be absorbed or entertained unless the petitioners' are regularised.
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> Shri Vasudeva Reddy contends that the petitioners are entitled for the benefit conferred under G.O.Ms.No.448.
>
> While considering petitioners' claim, the respondents may keep in view G.O.Ms.No.448 so far as it is not inconsistent with G.O.Ms.No.212.
>
> Subject to the above observation, the writ petition is disposed of. No costs."

Similar orders were passed by the learned Single Judge in Writ Petition Nos.3132 and 13930 of 1995.

In compliance of the directions given by the learned Single Judge(s) in different writ petitions, the Vice-Chairman and Managing Director of the Corporation forwarded the cases of the appellants and other employees to the government for regularisation of their services. After examining the individual cases, the State Government passed order dated 7.11.1995, which was circulated vide G.O.Ms.No.466 for regularisation of the services of the employees. The appellants were regularised on the post of Attenders.

The appellants challenged order dated 7.11.1995 and claimed that they are entitled to be regularised as Junior Assistants because, at the time of issue of G.O.Ms.No.448, dated 16.6.1989, they were qualified to be appointed as Assistant Grade-III (re-designated as Junior Assistant).

The learned Single Judge rejected the appellant's contention and held that the respondents did not commit any illegality by not regularising their services as Junior Assistants because on the date of consideration of their cases for regularisation, neither of them was having the prescribed qualification of graduation. The learned Single Judge noted that in terms of the policy contained in G.O.Ms.No.212, dated 22.4.1994, an employee could be regularised on the post of Junior Assistant only if he possessed the qualification of graduation and held that the writ petitioners, who were only matriculates as on the date of regularisation, cannot complain against the decision of the State Government.

We have heard Shri K. Ananda Rao, learned counsel for the appellants and perused the record. In our opinion, the appeal is meritless and is liable to be dismissed summarily.

In the first writ petition filed by them, the learned Single Judge took cognizance of G.O.Ms.No.212, dated 22.4.1994 issued for

regularisation of the services of daily wage and temporary employees and directed that the guidelines contained in that G.O. be kept in view for the purpose of considering the petitioners' claim for regularisation of their services. Simultaneously, he noted the submission made by the counsel for the petitioners that they are entitled to avail the benefit of G.O.Ms.No.448 dated 16.6.1989 and observed that while considering the claim of the petitioners, the respondents may keep in view G.O.Ms.No.448 insofar as it is not inconsistent with G.O.Ms.No.212.

The conditions of eligibility prescribed in G.O.Ms.No. 212, dated 22.4.1994 were as under:

"1. The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularised.

2. They should be within the age limits as on the date of appointment as NMR/Daily wage employee.

3. The rule of reservation wherever applicable will be followed and backlog will be set-off against future vacancies.

4. Sponsoring of candidates from Employment Exchange is relaxed.

5. Absorption shall be against clear vacancies of posts considered necessary to be continued as per workload excluding the vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.

6. In the case of work charged establishment, where there will be no clear vacancies, because of the fact that the expenditure on work charged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of work charged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of last Grade Service".

Admittedly, the qualifications prescribed for recruitment of Junior Assistant in the services of the Corporation as on 22.4.1994 was graduation and neither of the appellants possesses that qualification. Therefore, notwithstanding the fact that the policy contained in G.O.Ms.No.448, dated 16.6.1989 also provided for consideration of the cases of the employees for regularisation and at the relevant time, the qualification prescribed for the post of Assistant Grade-III (Junior Assistant) was only matriculation, the decision of the

government not to treat them eligible for that post on the ground that as on the date of consideration, they did not possess the prescribed qualification of graduation cannot be faulted.

In view of the above discussion, we hold that the learned Single Judge did not commit any error by declining relief to the appellants.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No. 907 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

July 11, 2007
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